GAHC040009172022 2026:GAU-AP:1191

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./25/2022

Barun Singh
S/o Rajeswar Singh,
Vill. Baghmajuagga,
PO and PS Koilabar, Dist. Arah, Bihar

VERSUS

THE STATE OF AP and Anr.
Represented by the Public Prosecutor, Arunachal Pradesh.

2:Preety Sonar
Age: 0
Occupation :
D/o Sri Raju Sonar

C/o T. Pongtey Laktong area
Changlang
PO and PS Changlang
Dist. Changlang
(A.P

Advocate for the petitioners : Mr. Mr. Idrish Choudhury

Advocate for the respondent : Mr. Chorpok Modi, Amicus Curiae

Ms. L Hage, APP

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 23.11.2026

Date of pronouncement of judgment : 26.11.2026

Whether the pronouncement is of the operative part of the judgment ? : N/A

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. Idrish Choudhury, learned counsel appearing for the appellant. Also heard Mr. Chorpok Modi, learned Amicus Curiae appearing for respondent No. 2, as well as Ms. L Hage, learned Addl. Public Prosecutor for the State of Arunachal Pradesh.

2. This appeal is preferred against the Judgment dated 29.04.2022 passed by the learned Special Judge (POCSO), Khonsa Division, Tirap District, Arunachal Pradesh, convicting the appellant under Section 447/365/376-D/511 of the Indian Penal Code, read with Section 8 of the POCSO Act, 2012 in POCSO Case No. 09/2020, sentencing the appellant to suffer simple imprisonment for 3 (three) months and to pay a fine of Rs. 500/- for the offence under Section 447 IPC, rigorous imprisonment for 7 years and to pay a fine of Rs. 5000/- for the

offence under Section 365 IPC, and further sentence to undergo rigorous imprisonment for 10 (ten) years and to pay a fine of Rs. 20,000/- for the offence under Section 376-D/511 IPC, in default of payment, rigorous imprisonment for 2 (two) months in addition to the above sentence and the sentences to run concurrently.

3. On examination, it was found that the case originated from an FIR dated 27-01-2014 lodged by the victim girl. It is alleged that she was residing at the house of Tesam Pongtey, located adjacent to the 4th Assam Rifle Camp, Changlang. On 22-01-2014, between 6:00 PM and 7:00 PM, while she was closing the bathroom door after attending to the call of nature, one person, namely, Barun (who had a loud voice), stated to be a cook of the Assam Rifles, suddenly caught hold of her from behind, covered her mouth and took her to his room inside the camp. The cook, along with another person of young age and dark complexion, raped her one after another. Thereafter, the cook forced her to drink alcohol, removed the cloth used to gag her and untied her hands, and threatened her with dire consequences if she shouted or informed anyone about the incident. The accused also offered her Rs. 1,000/-, put a mala around her neck and told her that he would marry her and apply sindur to her forehead. He thereafter took her away from Changlang at midnight. While raping her, he also cut her lower lip. When her aunt, Mrs. Rennu Pongtey, wife

of Tesam Pongtey, started searching for her and was shouting, the culprit let her go.

4. On receipt of the FIR, Inspector Titkam Tangha, OC/PS, Changlang, registered Changlang P.S. Case No. 01/2014 under Sections 447/365/376(G) IPC read with Sections 5(b)(i)(iv)/6 of the POCSO Act and endorsed the case to Lady Inspector T. Singpho for investigation of the same.

5. The OC, Changlang Police Station, sent the victim for medical examination. During the course of investigation, the Investigating Officer (IO) recorded the statements of the informant and other witnesses. The victim was also examined by the Medical Board for determination of her age and was produced before the Magistrate for recording her statement under Section 164 CrPC. After taking all other necessary steps in the investigation, including inspection of the place of occurrence, and upon finding a *prima facie* case against the accused, the IO submitted the charge-sheet under Sections 447/365/376(G) IPC read with Sections 5(b)(i)(iv)(g)/6 of the POCSO Act against accused Barun Singh.

6. On receipt of the charge-sheet, cognizance of the offences was taken, and the trial proceeded before the Special Court (POCSO), Tezu. Upon production of the accused from judicial custody and after hearing the learned Public Prosecutor as well as the learned defence counsel, charges under Sections

447/365/376-D read with Section 511 IPC and Section 8 of the POCSO Act were framed vide order dated 21-07-2014. The charges were read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

7. The prosecution examined as many as 12 witnesses before the Court of the learned Special Judge (POCSO), Tezu. Upon creation of this Court and consequent separation of territorial jurisdiction, the case record was transferred to this Court for trial and disposal. Thereafter, the prosecution examined two more witnesses before this Court. Thus, the prosecution examined a total of 14 witnesses, including the informant, the IO and the Magistrate who conducted the Test Identification Parade (TIP) and recorded the statement of the victim. The accused, on the other hand, declined to adduce any evidence in his defence.

8. Upon completion of the examination of the prosecution witnesses, the accused was examined under Section 313 CrPC, and his statement was recorded. All the incriminating circumstances appearing against him in the prosecution evidence were put to the accused for his explanation. The accused pleaded innocence. In his statement, the accused stated that a false case had been lodged against him and that he had not committed any offence.

9. On conclusion of the trial and upon hearing the arguments, the learned

Trial Court convicted and sentenced the accused-appellant as aforesaid.

10. At this stage, the evidence adduced during the trial may be discussed.

11. PW-1 is the victim in the present case. She deposed that she could identify the person standing in the dock, namely, Barun Singh. She had never attended school and was, therefore, illiterate. She did not know the year, date or month of the incident. The incident took place at night, sometime between 8:00 PM and 9:00 PM. She had gone to the bathroom to attend to the call of nature. She used the bathroom without locking it from inside. As soon as she finished urinating, the accused, Barun Singh, entered the bathroom, lifted her and took her to their compound. Thereafter, she was kept in a room. While the accused was carrying her from their compound and attempting to cross the boundary fencing, another man was already present on their side, who helped the accused carry her across the boundary fencing towards their compound.

Inside the room, the accused tied her hands and legs with a rope. Thereafter, her clothes, including her shirt, half-pant, bra and panty, were removed. The victim further stated that the accused had done a bad thing to her. The accused also removed his half-pant and partially inserted his male organ into her private part but could not fully penetrate her, as her aunt called out to her at that very moment. On hearing her aunt's voice, the accused got

up, put on his clothes and untied her. The accused had threatened her not to make any noise. At the time of the incident, her legs had been untied, but her hands were still tied with a rope. The other person did not sexually assault her. Thereafter, she put on her clothes, and the accused also helped her put on her clothes. The accused then pushed her out of the room.

She was crying at that time. On seeing her crying, one person from that compound called her and asked why she was crying. In the meantime, her aunt also arrived at the compound and started scolding and slapping her, asking why she had come to their compound. She then narrated the incident to her aunt and told her that a person from that compound had brought her there. Thereafter, her aunt asked her to identify that person. Accordingly, the victim went to the room along with her aunt and identified the accused as the person who had brought her to the compound. At that time, the accused was eating something from a bowl. Her aunt scolded the accused severely.

Thereafter, they went to the officer of the camp and reported the matter. Her aunt demanded that the accused be produced and punished, but the camp authorities did not produce him. On the following day, they went to the Police Station and reported the matter. On that day, the accused was brought to the Police Station, where she identified him.

She further stated that when the accused came to their compound to take her away, he was already drunk, and the smell of alcohol was emanating from his mouth as well as from the mouth of the other person. After the incident, both of them again consumed alcohol (IMFL). They also forcibly asked her to drink alcohol and made her consume a peg from their bottle. When she refused, they threatened to kill her if she did not drink. Thereafter, the accused was talking about bringing sindur (vermilion, applied to the forehead during marriage). In the meantime, she heard the voice of her aunt calling her. She exhibited the FIR bearing her right thumb impression, along with the photographs of the place of occurrence (PO).

12. During cross-examination, the victim stated that there was a small nallah in the compound before the boundary fencing. She also stated that the kitchen of the Assam Rifles was situated near the boundary fencing. She further stated that, even before the incident, she used to see the accused in that compound. The accused used to speak loudly on his mobile phone regularly, and she had heard his voice and could recognise it. She had also heard the accused being called by his friends by the name of Barun Singh. On the basis of the same, she identified him at the Police Station.

The victim further stated that her uncle, with whom she was residing, was

a public leader at that time and, as such, people used to visit their house regularly, and meetings were also held there. She used to prepare food in that house. She generally used to cook rice or prepare dinner by 8:00 PM. At that time, there was no electricity outside their house. She could not shout for help because the accused had first gagged her mouth with his hand and thereafter with a cloth when he lifted her and carried her with both her hands held behind her back. There was a hole in the fencing of the Assam Rifles through which she was taken to their compound. The victim denied the suggestion that a person could not pass through the said fencing. She stated that the time taken from the moment she was taken from the compound until the incident occurred thereafter might have been at least one hour, and they might have returned to their house by 10:00 PM. She did not remember the colour of the clothes worn by the accused at that time. She denied the suggestion that the accused had not taken her to that compound and that she was falsely implicating him. She also denied the suggestion that she had deposed before the Court at the instance of or upon being tutored by another person.

The victim denied the suggestion that her aunt had stated before the Police that she had been missing for only half an hour. She further stated that in her FIR, she had made allegations against both the accused persons, but one of them could not commit rape upon her. She reiterated that she had identified the

accused at the Police Station. She stated that she was taken to the Police Station, Hospital and Magistrate's Court, and nowhere else. She denied the suggestion that the accused had been falsely implicated in the case at the instance of her uncle, who was a political leader, by exerting pressure on the Police. She did not remember exactly how many days after the incident she had lodged the FIR. However, she stated that she went to the Police Station two days after the incident.

13. PW-02 is the father of the victim girl. He deposed that he was not present in the area at the time of the incident. After the incident, he was called by Mr. Tesam Pongte, who informed him about the incident. He also went to the Police Station and informed the Police that the victim was his daughter. His daughter, aged about 17 years, was working as a maidservant in the house of Pongte. He was told that his daughter had been apprehended by Assam Rifles personnel and raped by one of them.

During cross-examination, he stated that he was not informed as to who had raped his daughter or about the time, date and place of the incident. He further stated that he was informed about the incident after one week. He went to the Police Station along with Tesam Pongte. He could not say whether his daughter had been raped by another person and whether the allegation had

been levelled against the present accused. He further stated that the injury mark on the upper lip of his daughter was an old surgical mark resulting from an operation performed prior to the incident in the present case. He could not say whether the accused had not committed the crime. He had not visited the place of occurrence (PO).

14. PW-03, Shri Tangoman Langal, deposed that he knew the accused, Barun Singh, who was working as a water carrier in the 4th Assam Rifles Battalion (4th AR BN). He did not remember the exact date, but stated that in January 2014, at around 6:00 PM, he had gone to the bathroom to take a bath in the compound of the 4th AR BN. As soon as he entered the bathroom, the gate sentry, namely, Haokip, called out to him, informing him that a girl was crying near the old bathroom and asking him to go and see her. He went there and found a girl crying between the old bathroom and a storeroom constructed for keeping poultry.

In the meantime, the MLA Madam, whose house was adjacent to the said compound, also arrived on their side of the compound. He immediately informed the duty-in-charge officer, Havildar M.J. Mandal, about the matter. Thereafter, NCO Havildar M.J. Mandal arrived at the spot and spoke with the MLA Madam, following which the girl went back to their side of the compound,

and he left the place. The girl was crying at that time. He exhibited the photograph as a material exhibit, showing the place where he had seen the victim girl on that evening, and also exhibited the bunker of the sentry post.

During cross-examination, PW-03 stated that the MLA Madam had helped him locate the girl by directing the light of her torch towards her. He further stated that a civilian could not enter their compound without a pass, nor could anyone bring a civilian into their compound. He also stated that a person could not enter through the place shown in the photograph. He further stated that he had asked the victim girl how and why she had come into their compound. She replied while crying, and he could not understand what she was saying. Nobody, including the MLA Madam, explained to him what the girl had said. He did not know how the victim girl had come into their compound, nor did he know whether she had been brought there by somebody. He also had no knowledge of the alleged incident. He further stated that her clothes were in proper condition.

15. PW-04, Smti Renu Pongtey, deposed that she knew the accused, who was standing in the dock. At the time of the incident, she was at her house. A guest, namely, Shri Munson Jugli, came to her house. She then called the victim girl and asked her to bring a glass of water for the guest. However, the victim girl

was not found. Therefore, Renu went to the kitchen, thinking that the victim girl might be there, but she was not found there either. Thereafter, she went out of her house with a torchlight and called out the victim's name. Suddenly, the victim replied in a crying voice from the compound of the Assam Rifles Camp. Renu asked the victim girl to come back to their compound and also asked her who had helped her cross over to the Assam Rifles compound, as there was a deep nallah between the two compounds.

In the meantime, some other jawans gathered there. Renu requested them to call the person who had taken the victim girl to their compound. However, they did not produce the accused and instead asked her to go back, assuring her that they would take action against the accused and report the matter to the Police. She heard the jawans discussing the incident and taking the name of Barun, stating that Barun might have been the person who had done it. In the meantime, the accused, Barun, came towards them making some noise. On hearing his voice, the victim girl told Renu that he was the person who had brought her into the compound. When Barun reached near them, Renu shone her torchlight on his face and asked the victim girl whether he was the person who had brought her there. The victim girl identified Barun as the person who had brought her into the compound. On hearing this, the accused went away from that place. Renu then demanded that the accused be

brought back, but the jawans did not do so.

The victim told Renu that the accused had tied her hands and legs and kept her inside their compound. The victim further told her that, while she was returning from the bathroom, two persons had approached her from behind, caught hold of her, gagged her mouth and thereafter taken her to their compound. The victim also told Renu that they had forced her to drink alcohol. Renu had seen injuries on the victim's lips, which the victim stated had been caused by the accused biting her. The incident took place on 22-01-2014, at about 5:30 to 6:00 PM. As it was dark, Renu had used a torchlight. The victim girl also told her that the accused had assured her that he would marry her by putting sindur on her head and had threatened her not to make any noise. Renu went to the compound along with the victim girl and another person, namely, Shri Chowhal. Despite her repeated demands that evening, the accused was not handed over either to them or to the Police. They were assured that action would be taken and the matter would be reported to the Company Commander (CO). Therefore, they waited for 2-3 days. As no action was taken from their side, they reported the matter to the Police Station on 27-01-2014. Renu had given the same statement to the Police as she had deposed before the Court. After the FIR was lodged, she, along with the victim, led the Police team to the place of occurrence. She exhibited her signature on the handing-over and

taking-over document relating to the victim girl.

She further stated that a TIP was conducted at the Police Station, where several persons/jawans were made to stand in a queue and the victim was asked to identify the accused. Accordingly, the victim identified the accused.

During cross-examination, she stated that the victim had some difficulty in speaking, but could understand everything and could narrate the events. She further stated that she was illiterate and did not even know whether she had received any education during her childhood. She stated that the FIR was written, but had not been drafted by the complainant herself, and that she had merely put her thumb impression on it. She further stated that the co-accused had not been identified till date. She could not say whether the present accused was not the main accused who had committed the crime and whether it was the other accused, who could not be traced, who had committed the crime. She had focused the torchlight on the face of the accused from a distance of about five metres. At that time, the accused was inside their camp, while she was inside her own compound. She stated that she had informed the Police that the delay in lodging the FIR was due to the absence of her husband at the station. She further stated that the FIR had been drafted by them and submitted in the name of the victim.

16. PW-05, Shri Sharat Singh, deposed that he knew the person standing in the dock, namely, Barun Singh, who was working as a water carrier in the Assam Rifles. At the relevant time, he was in the dining hall. The time was before 6:00 PM. The distance between the dining hall and the place of occurrence (PO) was about 20-30 yards. The next day, he heard that Barun Singh had been confined in the quarter guard. Sharat further stated that he had given his statement to the Investigating Officer (IO) at the Police Station.

During cross-examination, PW-05 stated that nobody could enter their compound without permission. Apart from the main gate, a person could not easily enter their compound, as it was surrounded by a boundary wall and fencing.

17. PW-06, Shri Bhakta Nayak, deposed that he knew the person standing in the dock, namely, Barun Singh, who belonged to the Assam Rifles. On the evening of the alleged incident, he was performing duty at the dining hall and came to know that the accused, Barun Singh, had been placed in the quarter guard. He came to know the next day that the accused had been placed in the quarter guard in connection with a case involving a girl. He stated that he had given the same information to the Investigating Officer (IO).

During cross-examination, PW-06 stated that the accused was a habitual

drunkard. He had met the accused even before the incident, and the accused was drunk at that time. PW-06 further stated that, initially, he had heard that the accused had been placed in the quarter guard because of his drunkenness. He stated that he had no personal knowledge as to whether the accused had been placed in the quarter guard because of his drinking or for having done anything against the girl. He further stated that nobody could enter their compound except through the gate.

18. PW-07, Shri Nand Kishore Sharma, deposed that he knew the accused, Barun Singh, who was working as a water carrier in the Assam Rifles. On 22-01-2014, Nand Kishore was serving as the duty JCO of the 4th Assam Rifles at Changlang. Havildar M.J. Mandal, the duty Non-Commissioned Officer (NCO), appeared before him and reported that, upon receiving information from L. Paltay, the sentry on duty, that he had heard some noise from members of the public near their compound, he had gone there with a torchlight and found a girl inside their compound. Thereafter, the girl was handed over to her guardian. The next morning, Nand Kishore reported the same facts to the Adjutant (Controlling Officer). In the meantime, the guardian and members of the public gathered near the gate, whereupon the Adjutant went near the gate and spoke to the persons gathered there. He stated that he had given his statement to the Police.

During his examination, the witness was declared hostile and was cross-examined by the learned Public Prosecutor (PP). In such cross-examination, he stated that Havildar M.J. Mandal had also disclosed to him that, when Mandal handed over the girl to her guardian, the accused, Barun Singh, came out of the kitchen, raising his voice and saying, "Kisne kiya?" On hearing the voice, a torchlight was directed towards the accused's face, whereupon the girl identified him as the person who had taken her inside the compound and committed rape upon her. He further stated that the said fact had also been stated by him before the Police.

During cross-examination by the defence, the witness stated that he had not witnessed the incident himself, nor had he heard the said voices with his own ears. Therefore, he could not say whether the information given to him was true or false. He further stated that nobody could enter their compound without permission and that personnel were on duty round the clock. He added that any person entering the compound could easily be traced. He did not know how the victim girl had entered the compound, nor had anybody informed him about it. He also stated that Havildar M.J. Mandal had not disclosed to him that the girl had been raped. He stated that he knew nothing else about the case.

19. PW-08, Shri Songthat Paokholai Hokip, deposed that he knew the accused,

Barun Singh. In the year 2014, he was posted at Changlang. He did not remember the exact date, but stated that it was sometime in January 2014. At about 6:00 PM, he took over the bunker duty to keep watch over the area. About five minutes after he took over duty, it became dark. Thereafter, within another 15 minutes, a lady approached him with a torchlight pointed towards him. She was the owner of a house situated near their compound, at a distance of about 40-50 yards from his duty post. The lady asked him to come near her. As he could not move out from his duty area, he sent Sepoy Langal Paitey, who had come near that area to take a bath, to respond to the lady. Sepoy Langal went there and, after speaking with the lady, called out the duty NCO. He had given his statement to the Police.

20. PW-09, Shri Mohan Gurung, deposed that he knew the accused, Barun Singh, who was standing in the dock. They were together in the Assam Rifles compound at Changlang in the year 2013-14. On 22-01-2014, at about 8:30-9:00 PM, he was in the kitchen, as his duty that day was to cook. At that time, he heard people making noise and came to know that some civilians had entered the compound with an allegation against the accused, Barun Singh, that he had brought a girl into the compound and done something wrong to her. Mohan stated that he had not given any statement to the Changlang Police. He did not remember the exact date. On one occasion, when they were going

towards Assam in their company vehicle, a mobile handset was handed over to him for delivery to one Raj Bahadur of A Company, who was performing DR duty at Margherita, Assam. Accordingly, Mohan handed over the handset to that person. He had given his statement to a lady Police Officer of Changlang Police Station.

During cross-examination by the defence, the witness stated that he had not personally witnessed the incident and that he had only heard about it from others.

21. PW-10 Shri Mrityunjoy Mandal has deposed that he knows accused Barun Singh, who was standing in the dock, and that the accused was one of the Sipahis of their unit at the time of the incident. On that day, he was the Duty In-charge of the unit. On 22-01-2014, after detailing the personnel for duty from 5:30 PM to 6:00 PM, he returned to his room and was taking rest between 6:30 PM and 7:00 PM. At that time, one Sipahi, M.L. Palt, came to him and informed him that a lady had been seen in the compound. Thereafter, he went along with Mr. Pait to that place and found a person sitting behind the abandoned toilet, near the boundary. As it was dark, he could not recognise whether the person was male or female. Therefore, he ran back to his room to get a torchlight, asking Mr. Pait to wait there. He returned with the torchlight and, with its help,

saw a girl behind the abandoned toilet. By that time, a lady was already standing in the compound of a nearby private house adjacent to their compound. When he asked the girl how she had come to the compound, the girl replied something that he could not understand. A voice came from the lady who was standing on the other side of the compound, whereupon the victim girl started crying. The lady was also saying that a jawan of their company had taken the girl into their compound. The victim girl was scared to go back to the other compound because of that lady. However, later on, she crossed the fencing of their compound and went back to the compound from which she had come. The lady was demanding that they produce the person who had taken the girl from her compound to the Assam Rifles' compound. When he returned from the spot, he found accused Barun Singh having dinner in the kitchen. The accused called out to somebody loudly, and on hearing his voice, the lady standing on the other side identified him as the person who had taken the girl from her compound to the Assam Rifles' compound. Thereafter, he reported the facts stated by him before the Court to his senior, NK Subedar Kishor Singh, and Major Binit Gautam. Later on, the accused was found to be in an intoxicated condition and was taken to the jail on that evening itself. He had given his statement to the Police of Changlang PS.

During cross-examination by the defence, PW-10 stated that the victim girl

was in a normal condition. All her wearing apparel, including her hair clips, were in place and intact. The distance between the place where the victim girl was standing on their side and the place where the lady was standing on the other side of the compound on that evening would be about 20 metres. The victim girl's voice was loud when she was replying to his queries. He further stated that he did not know the lady standing on the other side of the compound on that evening. He assumed that the lady was the mother of the victim girl. The victim girl crossed over the same fencing to the other compound without anyone's assistance, on her own. He did not know at what time she was brought to the compound, nor had the lady disclosed the same. He stated that accused Barun Singh was confined behind the bars within their compound on that evening because of his intoxication. Barun used to remain intoxicated most of the time. His main duty was cooking and carrying water. When asked by the defence whether the accused was in a position to perform his duties or lift heavy weights due to his regular drinking habit at that time, PW-10 answered that the accused used to perform his duties along with others. He could not comment on the accused's health condition at that time, as they were from different companies.

22. PW-11 Shri H. Tanjang has deposed that in the year 2014, he was posted as the Medical Superintendent at District Hospital, Changlang. He examined the

victim girl, Miss Preety Sonar, on 27-01-2014. The victim was brought before him by a Police Officer. On examination, he found only a breach/crack on the lower lip of the victim girl. Apart from that, he found no other injuries on the body or genital parts of the victim girl. The age of the victim was determined by a medical board comprising three members, of which he was the Chairperson. He exhibited the medical report, age certificate of the victim and his signatures thereon.

During cross-examination by the defence, he stated that in the age certificate, he had not mentioned who had directed them to constitute the board. He further stated that they had not mentioned the method adopted for determining the age of the victim girl. He also stated that in the said certificate, they had to mention the age as disclosed by the victim girl. Further, he had not mentioned the age of the wound found on the lower lip of the victim.

23. PW-12 Shri T. Tangha has deposed that in the year 2014, he was posted as the Officer-in-Charge of Changlang Police Station. On 27-01-2014, at about 11:30 hours, he received an FIR lodged by the victim alleging that an offence of rape had been committed by accused Barun. He registered the FIR as Changlang PS C/No. 01/14 under Sections 447/365/376(G)/511 IPC read with Section 08 of the POCSO Act and endorsed the case to Lady Inspector Mrs. T.

Singpho, who had died, probably in the year 2015. He exhibited the FIR, his signature and the signatures of Late T. Singpho on the charge sheet and the seizure memo of the mobile handset.

During cross-examination by the defence, PW-12 stated that the victim girl was a minor. The victim girl, who was working as a domestic helper of Smti. Renu Pongtey, was brought to the Police Station by Mrs. Renu Pongtey on 27-01-2014 at 11:30 hours. The date of the offence was 22-01-2014. He stated that none of the parents of the victim girl had approached the Police Station prior to the registration of this case. The FIR was lodged after five days of the offence, as the guardian, Mrs. Renu Pongtey, had stated that she had been out of station. He further stated that he had not received any information regarding this offence prior to the lodging of the FIR. He also stated that the Police used to perform patrolling duty in and around Changlang town.

24. PW-13 Smti. Binti Mibang has deposed that during the month of February, 2014, she was posted at the Office of the Deputy Commissioner, Changlang, as a Circle Officer and was designated as a Judicial Magistrate Second Class by virtue of her posting. On 05-02-2014, her Dealing Assistant informed her that she was required to record the statement of a victim under Section 164(5) CrPC. The victim girl, aged about 16 years, was brought by a lady Sub-Inspector for

recording her statement. PW-13 asked the victim girl to take a seat in her office and, after some time, proceeded to record her statement.

The victim stated before PW-13 that on 22-01-2014, at about 6/7 PM, when she went to the toilet to attend to the call of nature, two persons from the Assam Rifles forcefully picked her up and carried her on their backs. Her residence was situated near the Assam Rifles Camp. They crossed the boundary fencing and took her to a room inside the Assam Rifles campus. There, both of them forcibly made her drink an alcoholic beverage. Thereafter, both of them pushed her to the ground and started undressing her. In the meantime, her employer came looking for her with the help of some Assam Rifles personnel, and she was rescued. When questioned, the victim disclosed that accused Barun Singh could not rape her as he was completely intoxicated, but another person had committed rape upon her.

Accordingly, PW-13 recorded the statement of the victim and read it over to her, who accepted the same as correct. Thereafter, PW-13 put her signature on the statement. The same was exhibited by PW-13.

During cross-examination, PW-13 stated that she had not mentioned the date of recording the statement in Exhibit No. 02. She had not mentioned the language spoken by the victim during the recording of the statement. After

recording the statement, PW-13 read it over and translated it to the victim. The statement was recorded in the standard prescribed form, but PW-13 had not written it in her own handwriting. She had no idea whether any application had been filed by the I.O. or whether any order had been passed for recording the statement. She did not remember how much time it took to record the statement. During the recording of the statement, the victim's voice was audible and clear. PW-13 did not require any assistance for recording the statement.

25. PW-14 Shri Snehangshu Roy has deposed that on 05-02-2014, the Investigating Officer of this case submitted an application for conducting a Test Identification Parade (TIP) of the accused person for the purpose of investigating the case. The District Magistrate ordered him to conduct the TIP. On 10-02-2014, he conducted the TIP at the Sub-Jail, Changlang. Eight Riflemen of the Assam Rifles, wearing similar combat dress, were lined up in a parade, including Shri Barun Singh (accused in the present case) at serial No. 08. The victim of the case was allowed to see the parade through a closed door to identify the accused. During that time, two other persons, namely, Kajol Chakraborty and Wangsam Tekhil, both UDCs in the Office of the Deputy Commissioner, were present as witnesses. The victim, Miss Preety Sonar, was asked to identify the accused, and at the first attempt, she correctly identified him. Thereafter, PW-14 asked the victim to sit at a place from where the parade

was not visible. PW-14 asked the persons participating in the parade to change their places, and accordingly, they were shuffled. Thereafter, he again asked the victim to identify the accused. During the second attempt also, the victim identified the alleged accused, Barun Singh. After completion of the TIP, PW-14 asked the Assam Rifles personnel to disperse. He prepared a report regarding the TIP and obtained the signatures of the witnesses present at the time of the TIP. The same was exhibited by PW-14.

During cross-examination, PW-14 denied the suggestion that he had not conducted the TIP at the Sub-Jail, Changlang. He also denied the suggestion that the TIP had been conducted at Changlang Police Station. He stated that it was not correct that the victim and Renu Pongtey had deposed that the TIP was conducted at Changlang Police Station. He further stated that the victim's deposition regarding the place of the TIP was false. PW-14 asked the victim/identifying witness whether she could identify the accused by name or by face, to which she replied that she could identify him by face. PW-14 conducted the TIP for the identification of only one accused person. PW-14 denied the suggestion that the I.O. had submitted an application for conducting the TIP to identify two accused persons. He further stated that he had not mentioned whether the persons participating in the parade were of similar age and body appearance. He denied the suggestion that Barun Singh was easily identified.

PW-14 had not asked the persons in the parade to speak for voice identification. He had not mentioned in his report the direction from which the persons had attended the parade. PW-14 had not mentioned the time when the TIP was conducted or how much time it took. He remembered that the TIP was conducted from 11:30 AM onwards.

In her statement before the Magistrate under Section 164 CrPC, the victim girl stated that one person had lifted her from the bathroom and another person had lifted her from the fence of the camp, and that she was raped in a small room containing rope, oranges, clothes, a basket, etc. The victim identified accused Barun Singh by his loud voice and face. He was wearing a full-sleeved combat shirt, long pants and slippers. The co-accused had a dark complexion, a thin moustache and dark spots on his face. He was shorter and slightly fatter than Barun and also younger than him. The co-accused wore half pants, a combat shirt and shoes. The victim stated that the first accused, Barun, could not penetrate her as he was completely drunk, but the other accused penetrated her slightly. On 22-01-2014, at about 6:10-7:00 PM, when she went to the bathroom for urination and was closing the door, she was caught from behind, and her mouth was tied with a cloth by two Assam Rifles personnel. They took her to their camp, tied her hands tightly, undressed her and forced her to drink, threatening to kill her if she did not drink. They forced her to the

ground and then raped her one after the other. After almost an hour, on hearing her guardian calling for her, the two accused dressed her and pushed her out of the room. Her guardian, with the help of another Assam Rifles personnel who was on gate duty that day, helped her come out of the camp.

26. Mr. Idrish Choudhury, learned counsel for the appellant, submits that the evidence of the victim is full of contradictions and, therefore, the same cannot be accepted at face value in the absence of proper corroboration. Learned counsel has referred to the FIR, wherein it has been stated that the appellant, along with another person, committed rape upon her one after the other**,** whereas, in her statement before the Magistrate, she stated that the appellant could not penetrate her as he was too drunk and that it was the other person who had penetrated her slightly. Thereafter, in the same statement, she further stated that the two persons forced her to the ground and raped her one by one. In contrast**,** she stated before the Court during the trial that the accused standing in the dock, namely, the appellant, partially inserted his male organ into her private part but could not fully penetrate her because her aunt called out to her at that very moment. She further stated that the other person did not commit sexual intercourse with her. Learned counsel submits that these totally contradictory versions render her deposition unworthy of credit.

27. Further inconsistencies have been pointed out by learned counsel for the appellant. It is submitted that, in her evidence before the Court, the victim stated that the accused-appellant had come into the bathroom, whereas, in her statement before the Magistrate, she stated that she was taken from outside the bathroom. Referring further to the evidence of PW-4, learned counsel submits that, although the victim, as PW-1, had stated that her aunty, i.e., PW-4, also came into that compound and started scolding and slapping her, she thereafter narrated the incident to her aunty. When her aunty asked her to show the person, she went to that room with her aunty and identified the accused as the person who had brought her to the compound. At that time, the accused was eating something from a bowl, whereupon her aunty scolded him severely. However, according to the evidence of PW-4 herself, she had never entered the compound. PW-4 stated that she had asked another jawan to help her cross over from that compound into her own compound, as there was a deep *nallah* between the two compounds.

28. It is further submitted that, as per the medical evidence, the version of the victim is not substantiated, as there was no sign of rupture of the hymen or any other injury on her person**,** despite her claim that she had been raped after both her hands and legs were tied with a rope, which would certainly have left some marks of injury on her person.

29. Learned Addl. Public Prosecutor submitted, with reference to the medical report, that the victim had sustained an injury on her upper lip, which was detected by the Medical Officer. Further, from the evidence of PW-10, who is an independent witness, it is established that the victim was found in the compound. PW-7, an Assam Rifles personnel, also stated that Havildar M.J. Mandal, the NCO on duty, had found a girl inside the Assam Rifles compound and that she was handed over to her guardian, whereupon the matter was reported to the Controlling Officer. It is submitted that, although this witness was declared hostile by the Court on the prayer of the prosecution, he admitted during his cross-examination by the prosecution that Havildar M.J. Mandal had disclosed to him that, when he handed over the girl to her guardian, the appellant came out of the kitchen and was raising his voice. Thereupon, a torch was focused on the appellant's face, and he was identified as the person who had taken the girl inside the compound and committed rape. He further admitted that the said facts had been stated by him before the IO. Learned PP submitted that the version of the victim has been duly corroborated by the other prosecution witnesses and that there is no infirmity in the impugned judgment.

30. Mr. Chorpok Modi, learned *Amicus Curiae* representing respondent No. 2, submitted that the inconsistencies pointed out by learned counsel for the appellant are minor in nature and that the delay in lodging the FIR is no ground

to interfere with the impugned judgment, which does not suffer from any error. He further submitted that the appellant has failed to point out any such error warranting interference by this Court.

31. I have duly considered the rival submissions and also perused the material on record.

32. PW-4 had deposed that, when she did not find the victim in her kitchen, she came out of her house with a torchlight and called out the victim's name, whereupon the victim responded in a crying voice from inside the Assam Rifles camp compound. This part of her evidence was not challenged in cross-examination. PW-10 also deposed that, when he fetched a torchlight from his room and returned, he could see a girl behind the abandoned toilet with the help of the torchlight, and that, by that time, a lady was already standing in the nearby compound of a private house adjacent to the Assam Rifles compound. This evidence was also not challenged during cross-examination. Rather, it emerged more clearly during cross-examination that the victim girl was found inside the Assam Rifles compound.

33. The victim herself had deposed that, immediately after she finished urinating at around 8:00 PM, the accused-appellant came to the bathroom, lifted her and took her to their compound. She further stated that, when he was

trying to cross the boundary fencing, one man was already present on the other side, who helped the accused-appellant and the victim cross the boundary fencing and enter their compound. She also stated during cross-examination that there was a hole in the fencing of the Assam Rifles compound through which she was taken into the said compound. She denied the suggestion that a person could not pass through the said fencing.

34. This is also corroborated by her statement before the Magistrate, wherein she stated that one person had lifted her from the bathroom, while another person had helped her cross the fence of the camp. Although, subsequently, in the same statement, she stated that she had been caught from behind and her mouth had been tied with a cloth by two Assam Rifles personnel, who took her to their camp**,** it is not very clear from the said statement whether she meant that both the persons had caught her from behind together. In that sense, there does not appear to be any material contradiction between the said statement and the version of the victim before the Court. The victim was also not confronted with any previous statement made before the police so as to challenge the aforesaid version given by her before the Court. Therefore, the evidence establishing the charge of kidnapping/abduction is clear and convincing, as is the evidence relating to the charge of criminal trespass.

35. The victim, PW-1, in her evidence before the Court, deposed that the accused-appellant opened his half-pant and partially inserted his male organ into her private part, but could not fully penetrate her due to the interruption caused by her aunt calling out at that very moment. In her statement before the Magistrate, she had initially stated that the accused-appellant could not penetrate her as he was heavily intoxicated.

36. It is quite possible that both situations may coexist, i.e., the appellant was too drunk to complete the act, and the aunt/employer of the victim also came calling at the very moment when the appellant was attempting to penetrate the victim. This does not mean that no attempt to commit rape was made by the accused-appellant. Even if the testimony of the victim regarding partial penetration by the accused-appellant is discarded**,** the evidence still establishes that he attempted to commit rape by inserting his penis but failed due to external intervention in the form of the arrival of PW-4, or because he was physically incapable of completing the act owing to a high degree of intoxication. In other words, the accused-appellant did not desist from the act voluntarily, but was prevented from completing it on account of his physical incapacity due to intoxication, coupled with the interruption caused by the arrival of **37.** In ***Madan Lal vs. State of J & K., (1997) 7 SCC 677****,* it was held by the Apex Court as follows:

"12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with Section 511 IPC. In the facts and circumstances of the present case the offence of an attempt to commit rape by the accused has been clearly established and the High Court rightly convicted him under Section 376 read with Section 511 IPC."

38. In Aman Kumar vs. State of Haryana, (2004) 4 SCC 379, the Apex Court had held:

"*10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have*

resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt."

39. With regard to the proper identification of the accused, it has come in the evidence of PW-7 that he went with a torchlight and found a girl inside their compound, whereupon he handed her over to her guardian. During his cross-examination by the learned PP, he stated that when the appellant came there, a torchlight was focused on his face, and the victim girl identified him as the person who had taken her inside the compound and committed rape. Furthermore, it also appears that the victim could identify the appellant by his voice, which she had often heard prior to the incident, as the appellant used to speak loudly over his mobile phone. This is also supported by the evidence of PW-4. The victim, PW-1, also deposed that she had seen the accused-appellant in their compound even prior to the incident. Hence, the accused-appellant was known to the victim by both sight and voice even before the incident. She identified him immediately after the incident before her employer, PW-4, and also correctly identified him on both occasions during the Test Identification Parade, as deposed to by PW14. Therefore, the identity of the accused-appellant as the perpetrator of the offence stands established beyond reasonable doubt.

40. Although the victim stated that the other person did not have sexual intercourse with her, she did state that he, along with the present appellant, touched and pressed her breasts as well as her private parts. The alleged contradiction arising from her previous statement before the Magistrate, wherein she initially stated that the other accused had slightly penetrated her and thereafter stated that both the accused had put her to the ground and raped her one by one, must be understood as an embellishment. However, such an embellishment, by itself, cannot be a ground to disbelieve the entire evidence of the victim.

41. The prosecution sought to establish the age of the victim by exhibiting the Age Certificate dated 04.02.2026 (or 04.02.2016), issued by the District Hospital, Changlang, Arunachal Pradesh, which was marked as Exhibit-5 through PW-11. He deposed that the age of the victim was determined by a three-member Board of Doctors, of which he was the Chairperson. During his cross-examination, he admitted that the said Board had not mentioned the method adopted for determining the age of the victim girl. He also stated that they were required to mention in the certificate the age as stated by the victim girl.

42. A perusal of the aforesaid Age Certificate, Exhibit-5, shows that the space

meant for recording the age as stated by the victim has been left blank. However, PW-11 admittedly did not depose as to the manner in which the age of the victim was determined. In the absence of any report of radiological evaluation or an ossification test, the Age Certificate, Exhibit-5, by itself, does not constitute proof of the victim's age. It also appears that the defence had challenged the reliability of the certificate, as it was put to PW-11 during his cross-examination that he had not mentioned the manner or method by which the age was determined. Therefore, the learned Trial Court could not have relied upon the aforesaid certificate, together with the oral testimonies of the victim's parents and other witnesses who deposed that the victim was 17 years of age, to conclude that she was a minor. This is particularly so in a case where the difference between the age of majority and the stated age of the victim is very narrow, as in the present case. Moreover, the Age Certificate itself records the victim's age as approximately 16–17 years.

43. The law is well settled that a variation of two years is to be taken into consideration when the age of the victim is determined on the basis of ossification test, which presumably was the method used by the Medical Board to determine the age of the victim in the present case *(**Jaya Mala vs. Home Secretary, Government of Jammu & Kashmir**, **(1982) 2 SCC 538 : AIR 1982 SC 1297**).* Therefore, by adding two years to the age given by the

Medical Board, the victim could have been 18–19 years old at the time of the incident.

44. In view of the above discussion, the conviction of the appellant under Sections 447/365/376(D) IPC is sustained. The learned Trial Court has sentenced the appellant to undergo rigorous imprisonment for 10 years under Section 376D/511 IPC and to pay a fine of Rs. 20,000/-.

45. Section 376D IPC prescribes a minimum punishment of rigorous imprisonment for a term of 20 years, along with fine, and a maximum punishment of imprisonment for life, which shall mean imprisonment for the remainder of the person's natural life, along with fine.

46. Section 511 IPC, which deals with attempts to commit offences, reads as follows:

> "***511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment—***
>
> *Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as*

the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both."

47. From the above, it appears that the convict may be sentenced to a term of imprisonment extending to a maximum of one-half of the longest term of imprisonment provided for the offence, which, in the present case, is 20 years, and one-half thereof would be 10 years**.** The longest term of imprisonment provided for the offence under Section 376D IPC is 20 years, as distinguished from the other punishment prescribed therein, namely, imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life**.**

48. Therefore, in other words, Section 511 IPC provides for two different measures for determining the maximum punishment**.** The first is one-half of the imprisonment for life, and the second is one-half of the longest term of imprisonment provided for the offence (20 years) which, in the present case, would be 10 years under Section 376D IPC. Therefore, the Court may award either of the aforesaid punishments, subject to the applicable statutory limits**.**

49. It is to be noted that the above represents only the maximum punishment that may be imposed by the Court, and there is no bar on the Court imposing a lesser sentence.

50. Having regard to the facts and circumstances of the case, as well as the

fact that the prosecution could not establish that the victim was a minor, which was one of the factors that must have weighed in the mind of the learned Trial Court while determining the quantum of punishment**,** I am of the view that the sentence of rigorous imprisonment for 10 years awarded under Section 376D/511 IPC deserves to be reduced to rigorous imprisonment for 7 years**.** The remaining sentences, including the sentence of fine, shall remain undisturbed.

51. The appeal stands partly allowed to the extent indicated above. Send back the TCR.

JUDGE

Comparing Assistant